IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 5 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? 1 to 5 = NO

PRATIK NAVINCHANDRA SHAH

Versus

STATE OF GUJARAT

Appearance:

MR SR BRAHMBHATT for Petitioner

Mr. S.A. Pandya, APP, for Respondent No. 1

MR BN RAVAL for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 30/04/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Additional Government Pleader, Mr. S.A. Pandya, for respondent No.1 and learned advocate Mr. B.N. Raval for respondent No.2. By the consent of the learned advocates for the parties, this Special Criminal Application is taken up for final hearing.

The petitioner, by filing this Special Criminal Application under Article 226 of the Constitution of India, has prayed to quash first information report, registered at Satellite Police Station, being C.R.I-0686/97, for the offences punishable under Sections

394, 341 and 11 of the Indian Penal Code and Section 135(1) of the Bombay Police Act.

The brief facts leading to filing of this application are as under:

The petitioner is working as Manager in the firm, Parswa Travels, engaged in travelling business. An agreement was entered into with respondent No.2 on June 4, 1994, whereby, it was decided that a Mini Bus, bearing Registration No. GQE 3375, was sold to respondent No.2 for a consideration of Rs.1,65,000/-. Rs.65,000/towards part of consideration were paid by cheque by respondent No.2 on June 6, 1994 and the remaining amount of Rs.1 lakh was promised to be paid by October 4, 1994. Cheque for Rs.1 lakh was issued by respondent No.2 on October 6, 1994, which, on presentation for encashment, was dishonoured with an endorsement of the Bank "no sufficient amount". A criminal complaint came to be lodged by the petitioner in the month of October 1994 against respondent No.2 under Section 138 of the Negotiable Instruments Act.

Civil Suit No.6424 of 1994 was filed by respondent No.2 against the petitioner for a declaration and permanent injunction that respondent No.2 was the owner of Mini Bus in question and for an injunction restraining the petitioner from taking possession of the said Mini Bus from respondent No.2. The learned Judge of the City Civil Court, by his order dated July 25, 1997, granted injunction in favour of respondent No.2 restraining the petitioner from taking forcible possession of the Mini Bus on the condition that respondent No.2 was to deposit Rs.25,000/- in the court on or before August 14, 1997 and further payment of Rs.25,000 on or before September 14, 1997, and respondent No.2 was directed to ply the said vehicle after obtaining necessary permits from the R.T.O. authority with comprehensive policy as required under the Motor Vehicles Act. The said order was challenged by respondent No.2 by filing Appeal From Order No.405 of 1997, which came to be dismissed by this Court (Coram: M.S. Shah, J.) on August 13,1997. The order of the trial court was, thus, confirmed with certain modification.

From the facts emerging from the record of this application, it appears that the petitioner took forcible possession of the Mini Bus on December 2,1997 at about 14 hrs. at the point of knief, while the bus was being plied on Sarkhej-Gandhinagar Highway. Respondent No.2, therefore, filed first information report before the

Satellite Police Station on December 3,1997 at 17.30 hrs, against the petitioner, for the offences punishable under Sections 394, 341, and 114 of the Indian Penal Code read with Section 135(1) of the Bombay Police Act. By means of the present Special Criminal Application under Article 226 of the Constitution of India, the petitioner challenges the very basis of the said complaint filed at the Satellite Police Station.

Mr.S.R. Brahmbhatt, learned advocate appearing for the petitioner, has submitted that, since respondent No.2 was plying Mini Bus without paying full consideration amount and did not abide by the terms and conditions imposed by the learned Judge, City Civil Court, Ahmedabad, in the order passed below application for injunction filed in Civil Suit No.6424 of 1994, the petitioner in bona fide belief had taken possession of Mini Bus from respondent No.2. It is, therefore, submitted that the petitioner has not committed any offence and, therefore, the complaint in question requires to be quashed. In support of his submission, the learned advocate for the petitioner has placed reliance on the decision of the Supreme Court in the case of Trilok Singh vs. Satya Deo, reported in AIR 1979 Supreme Court 850. In the case before the Supreme Court, the truck, which was purchased under hire purchase agreement, was seized and the possession of the said truck was presumably taken by the financier from the purchaser. The purchaser filed first information report for the offences punishable under Sections 395, 468, 465, 471, 412, 120-B and 34 of the Indian Penal Code. The learned Chief Judicial Magistrate, Khanpur, after holding inquiry under Section 202 of the Code of Criminal Procedure, 1973, issued process against the financier. The issuance of the said process was challenged before the High Court under Section 482 of the Code and the High Court had refused to quash the process issued by the learned Chief Judicial Magistrate, Khanpur. The financier filed appeal before the Supreme Court challenging the order of the High Court. The Supreme Court, taking into consideration the facts and circumstances of the case, quashed first information report on the ground that the dispute raised was of purely of civil nature and criminal proceedings initiated was an abuse of process of the Court.

In my view, the decision of the Supreme Court in the case of Trilok Singh (supra), will not apply to the facts of the case, because, in this case, the Mini Bus was sold by an agreement and not under any hire purchase scheme. The decision of the Supreme Court in the case of

Trilok Singh (supra) can also be distinguished on the ground that, when the Civil Court has granted injunction in favour of respondent No.2, it was not open for the petitioners to take forcible possession of the Mini Bus. The petitioner had taken forcible possession of the Mini Bus and committed breach of the injunction which was granted by the competent Civil Court in favour of respondent No.2. Therefore, in my view, the decision of the Supreme Court the case of Trilok Singh (supra) will not be helpful to the petitioner.

The learned advocate for the petitioner has invited my attention to the judgment of the Supreme Court in the case of K.M. Mathai alis Babu and another vs. Kora Bibbikutty and another, reported in 1996 Supreme Court Cases (Cri.) 281. This decision is also arising from hire purchase agreement and the Supreme Court, in the facts and circumstances of the said case, held that, in the event of failure to make payment of instalment/s, the financier had right to resume possession of the vehicle even if the agreement does not contain a clause of resumption of possession. In the present case, the Mini Bus was sold by handing over possesion. Furthermore, the City Civil Court, Ahmedabad, had granted injunction in favour of respondent No.2 restraining the petitioner from dispossessing the purchaser of the possession of the Mini Bus and, therefore, the decision in the case of K.A. Mathai (supra) also will not be helpful to the petitioner in the present case.

The learned advocate for the petitioner has also drawn my attention to the decision of the Supreme Court in the case of State of Haryana and others vs. Bhajanlal and others, reported in AIR 1992 Supreme Court 604. The Supreme Court, in the case of Bhajanlal, has laid down several guidelines under which complaint or first information report can be quashed. There cannot be two opinions with the principles laid down by the Supreme Court in he case of Bhajanlal. Each case is to be decided on the facts of the case, and keeping in mind the allegations made in first information report or complaint, with the sole purpose either to prevent abuse of the process of any court or to secure the ends of justice. If the allegations made in complaint or first information report, prima facie, disclose ingredients of offence stated therein, then, the complaint cannot be quashed. Reliance is also placed by the learned advocate for the petitioner on the decision of the Supreme Court in the case of M/s. Pepsi Foods Limited and another vs. Special Judicial Magistrate and others, reported in AIR 1998 Supreme Court 128, to contend that this Court has

wide powers under Article 226 of the Constitution of India to quash the complaint by relying upon the additional material, and the fetters under Section 482 of the Code will not be applicable when a petition is filed under Article 226 of the Constitution of India to quash complaint or first information report. The submission of the learned advocate for the petitioner deserves to be rejected. In the facts and circumstances emerging from the record, in the case of Pepsi Foods Limited, the Supreme Court quashed the complaint. In the case of Pepsi Foods Limited, there was no allegation nor a whisper against the appellants and the preliminary evidence on which the first respondent relied in issuing summon to the appellants also did not show as to how it could be said that the appellants were manufacturers of either the bottle or the beverage or both and, in that situation, the Supreme Court quashed the process issued by the learned Magistrate.

In quashing complaint or first information report, the court is required to see the allegations made in the complaint and the accompaniment annexed along with complaint or first information report. The court is not required to see additional material in coming to the conclusion that the complaint is filed with the sole purpose of abuse of process of law. In my opinion, the first information report, which is lodged by respondent No.2 at the Satellite Police Station, does disclose commission of offence punishable under Section 394 of the Indian Penal Code against the petitioner that, by taking law into his hands he had forcibly taken possession of Mini Bus at the point of knief, and had caused damage to Mini Bus in question. While taking possession of the Mini Bus, theft of Rs.950/- was also committed and, therefore, ingredients of Section 394 of the Indian Penal Code are, prima facie, established. While taking possession of Mini Bus, the petitioner had committed offence of wrongful restraint, as defined under Section 339 of the Indian Penal Code by not allowing respondent No.2 in proceeding with the Mini Bus. Therefore, in my opinion, the allegations made in the first information report, prima facie, establish the ingredients of offence of wrongful restraint. It is settled legal principle that, when the investigating agency has taken cognizance of offence, which is in the nature of cognizable offence, the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India should not interfere. Where the investigation is still on its way and the further investigation in the offence is legally permissible as contemplated by Section 173(8) of the Code, the quashing of investigation by the High Court

would not be permissible (See: AIR 1992 Supreme Court 1930 : M/s. Jayant Vitamins Limited vs. Chaitanyakumar).

It is also submitted by the learned advocate for the petitioner that the dispute involved is of civil nature and respondent No.2 has tried to use filing of first information report as lever to get back the possession of Mini Bus. This submission of the learned advocate for the petitioner is also devoid of any merit. In the case of Pratibha Rani vs. Suraj Kumar, reported in AIR 1985 Supreme Court 628, the Supreme Court has observed as under:

"There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrong doer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import."

Merely because there is civil dispute, first information report cannot be quashed. If, during pendency of civil dispute, a person commits an offence, the aggrieved party can certainly initiate criminal proceedings. Looking to the facts of the present case, when the civil dispute was pending, the petitioner, by taking the law into his hands, had forcibly taken possession of Mini Bus, which he was not entitled to, as he was prevented by injunction of the City Civil Court.

In the case of State of Bihar vs. P.P. Sharma, reported in AIR 1991 Supreme Court 1260, the Supreme Court has held as under:

"The annexures to the writ petition challenging criminal proceedings against accused were neither part of the police-reports nor were relied upon by the investigating officer. These documents were produced by the accused before the High Court along with the writ petitions. By treating the annexures and affidavits as evidence and by converting itself into a trial Court, the High Court cannot declare the accused to be innocent and quashed the proceedings. The appreciation of evidence is the function of the criminal Courts. The High Court, under

the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law."

In my view, filing of this application under Article 226 of the Constitution of India, for quashing first information report, filed by respondent No.2, before the Satellite Police Station, the petitioner cannot throttle the investigation, which is at the threshold, by producing additional material and annexures along with the petition. In the case of Chand Dhawan vs. Jawahar Lal, reported in AIR 1992 Supreme Court 1379, the Supreme Court deprecated the practice of the court in relying upon additional material produced at the time of quashing of complaint.

In the facts and circumstances of the case, the allegations made in the first information report, prima facie, establish ingredients of offences punishable under Sections 394, 341, 114 read with Section 135(1) of the Bombay Police Act. When the first information report, prima facie, discloses ingredients of offences, it cannot be said that the first information report is filed as a result of manifestly attended mala fides.

At the conclusion of arguments, the learned advocate for the petitioner has submitted a list of authorities, without making any submission in that regard.

1. (1973) 2 SCC 823
2. (1970) 3 SCC 4
3. (1976) 3 CRIMINAL LAW JOURNAL 98
4. AIR 1975 SC 495
5. 1981 CRI.L.J.1325
6. AIR 1975 SC 1002
7. AIR 1975 SC 495
8. AIR 1985 SC 628
9. AIR 1988 SC 709
10. 1993 GLH (UJ)
11. 1980 (2) GLR 341

In the midst of the dictation, the learned advocate for the petitioner has also drawn my attention to the decision of the Supreme Court in the case of Madhavrao vs. Sambhajirao, reported in AIR 1988 Supreme Court 709. The learned advocate for the petitioner has referred to paragraph 7 of the judgment and has submitted that the uncontroverted allegations as made in the complaint do not prima facie establish offence and the first information report deserves to be quashed. When I

have already held in the present case that the first information report does prima facie disclose ingredients of offences, as alleged against the petitioner, observations of Supreme Court in paragraph 7 of Madhavarao case (supra) will not be applicable to the facts of the present case. In quashing the complaint, only allegations in the complaint are to be looked into. A bare reading of the complaint, prima facie, establishes ingredients of offences alleged. At this stage, it cannot be said that chance of conviction is bleak and, therefore, no useful purpose will be served by allowing criminal prosecution and, therefore, the judgment in the case of Madhavrao (supra) will not be helpful to the petitioner.

This is not a rarest of rare case which would fall within the guidelines laid down by the Supreme Court in the case of Bhajanlal (supra), and, therefore, no interference of this Court in exercise of its powers under Articles 226 of the Constitution of India is called for, to quash the first information report lodged by respondent No.2 at the Satellite Police Station against the petitioner.

As a result of foregoing discussion, I do not find any substance in this application and the same is rejected. Rule is discharged. The interim relief stands vacated.

At this stage, the learned advocate for the petitioner has prayed to extend the interim relief which was granted earlier, so as to enable the petitioner to approach the higher forum challenging the judgment of this Court. In my opinion, this prayer cannot be granted. The investigation by the police is sufficiently delayed by three months, and it would be further delayed if the interim relief granted earlier is continued. Hence, the prayer for extension of interim relief is rejected.

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(swamy)